

ARTICLE 12**GENERAL ZONING REGULATIONS****§ 12.01. APPLICABILITY OF ZONING REGULATIONS.**

- A. No land or premises may be used and no building or structure may be erected, raised, moved, extended, enlarged, altered or used for any purpose other than a purpose permitted by this ordinance for the zone district in which the land, premises, building or structure is located, and all uses and construction shall be in conformity with the regulations provided for the zone district in which such land, premises, building or structure is located.
- B. In applying the provisions of this ordinance, a departure from the literal requirements shall not be considered a violation if, in the opinion of the Zoning Officer, the departure is de minimus. For purposes of administering this provision, "de minimus" is intended to mean that the departure from the literal requirements of this ordinance is inappreciable and does not impair the intent and purpose of the zone plan and this ordinance. Any interested party may appeal a determination of the Zoning Officer in this regard in accordance with the procedures set forth in § 7.02B.
- C. No development shall be permitted without first obtaining zoning approval, a construction permit, demolition permit, or certificate of occupancy, as applicable, unless specifically exempted by this ordinance or other law. No zoning approval, construction permit, demolition permit or certificate of occupancy shall be issued by the Construction Official or Zoning Officer except upon application and approval therefor in accordance with the procedures set forth in Article 6 and in conformity with the provisions of this ordinance.
- D. The control and regulation of the uses of buildings and structures by this ordinance shall apply equally to the nature and extent of the uses of the lot or lots upon which they are erected.

§ 12.02. VARIANCES.

- A. **General.** The Planning Board or Zoning Board of Adjustment, as applicable, may in appropriate circumstances grant relief from the literal provisions of the zoning regulations in accordance with the powers of the respective board and in accordance with the procedures set forth in Article 7.
- B. **Expiration of variances.** Any variance from the zoning regulations, Articles 11 through 19, hereafter granted shall expire by limitation unless the construction, alteration or use, as applicable, permitted by the variance shall have been actually

commenced within twelve (12) months of the date of memorialization of approval of the variance; provided, however, that the running of the period of limitation herein provided shall be tolled in the case of legal action as provided in § 8.16. Notwithstanding the foregoing, any variance hereafter granted in connection with a subdivision or site plan application shall not expire as provided above, but shall expire in the same manner as the subdivision or site plan approval, as applicable, as set forth in Article 8.

- C. **Time period for approvals granted for pre-existing conditions.** Any approval granted for a pre-existing condition pursuant to § 7.01B and § 8.06E hereof shall not expire by limitation after twelve (12) months as is provided elsewhere for variances granted for a condition not pre-existing, but instead shall continue in full force and effect thereafter until a new application is received pursuant to § 7.01B and § 8.06E, different from the one received for which the approvals were granted.

§ 12.03. YARDS.

There shall be provided for every lot front, rear and side yards as required in the zone district in which said lot is located. The required yard dimensions shall be measured perpendicular to the lot line and shall be measured between the lot line and the furthest projection of the building, unless specified otherwise in this ordinance.

- A. **Required yards apply individually to each lot.** No open space which has been counted or included as a part of a side yard, rear yard, front yard, or other open space as required by this ordinance for one lot may, by reason of change of ownership or for any other reason, be counted or included in order to comply with the yard, or other open space requirement of any other lot.
- B. **Permitted yard encroachments.** Except as hereinafter specified, or as may be specified otherwise by this ordinance, yards and courts shall be entirely free of buildings, structures, or parts thereof; provided, however, that no building, structure or part thereof shall be permitted to encroach beyond any boundary for the subject property, unless specifically permitted otherwise by this ordinance or other law.
1. Cornices and eaves may encroach up to three (3) feet into any required yard or court.
 2. Window air conditioners, basement window wells, "Bilco" - style basement doors, ground mounted air conditioning equipment, ingress and egress platforms, awnings, and window flower boxes may encroach into any required yard or court without limitation.

3. Fire escapes may encroach up to four (4) feet into any required yard or court.
4. Ground-supported chimneys, chimney box structures, and flues, stacks and vents attached to the side of a building may encroach up to two and one-half (2½) feet into any required yard or court; provided, however, that the area of such encroachment projected to ground level shall not exceed twelve (12) square feet.
5. Oriels, bay windows, bow windows, window greenhouses, and similar architectural devices, may encroach up to three (3) feet into any required yard or court; provided however, that the area of such encroachment projected to ground level shall not exceed fifteen (15) square feet and further provided that such encroachment is limited to structures on the ground floor of the building.
6. Sills, leaders, belt courses and similar ornamental structural features may encroach up to six (6) inches into any required yard or court.

C. **Front yard, street side yard, lot frontage, and lot width in case of substandard street width. [Amended 11-21-06 by Ord. No. 1878]**

All front yards and street side yards must face upon a dedicated public street and shall be of the size required for the particular zone district in which the lot is located; provided, however, that:

1. On streets having a right-of-way less than fifty (50) feet in width, the required front yard(s) and street side yards shall be increased by one-half the difference between the width of the street and fifty (50) feet;
2. Wherein the street side yard of any corner lot abuts a right-of-way of less than fifty (50) feet in width, the lot frontage and lot width requirements pertaining to the lot shall each be increased by one-half the difference between the width of the street and fifty (50) feet;
3. Any lot which abuts a street with a proposed right-of-way greater than fifty (50) feet in width as shown on the Street Plan of the Master Plan of the Town of Westfield, adopted pursuant to N.J.S.A. 40:55D-28, shall have a front yard and/or street side yard setback measured from the nearest line of the proposed building or structure to the proposed right-of-way line as shown on said Master Plan.

- D. **Front yard requirement to reflect established pattern.** In the RS-40, RS-24, RS-16, RS-12, RS-10, RS-8, RS-6, RM-12, RM-8, RM-6, RM-6D, P-1, P-2, O-1 and GB-3 zone districts, and in the case of single family detached and two family dwellings in the RA-3 zone district, where existing principal buildings on the same side of the street form an established front yard depth, the front yard for principal buildings on the subject property shall not deviate from this established yard depth; provided, however, that in no event shall the required front yard depth be less than 25 feet.

If such established front yard depth varies, the dimension to be used in administering the above front yard requirement shall be equal to the average depth of the established front yards; provided, however, that in calculating the average front yard depth, the Zoning Officer may disregard a yard or yards if same obviously deviate from the prevailing front yard pattern. For purposes of administering the above provisions, the properties used for determining said established front yard depth shall be located, in whole or in part, within the following distances of the subject property, and must be on the same side of the street, in the same block and must be subject to the same front yard requirement in the zone district regulations as the property in question:

Zone	Distance*
RS-40, RS-24, RS-16	300 feet
RS-12, RM-12, P-1, P-2, O-1	225 feet
RS-10, RS-8, RS-6, RM-8, RM-6, RM-6D	200 feet
RA-3, GB-3	200 feet

* distance measured along the street right-of-way line.

If no established front yard depth exists, as for example, in the case of a development on a new street or on a street having several vacant lots, the front yard dimension set forth in the applicable zone district regulations shall apply. **[Amended 11-21-06 by Ord. No. 1878]**

- E. **Front yard requirement for additions to principal buildings.** Notwithstanding the front yard requirements in § 12.03D above and in the various zone district regulations, additions to principal buildings may be located further from the front street right-of-way line than would otherwise be permitted by said requirements. No addition shall be permitted, however, which would be located nearer to the front street right-of-way line than would otherwise be permitted by said requirements.

§ 12.04. BUILDINGS AND ABOVE GRADE STRUCTURES.

- A. **More than one (1) principal building or structure on same lot prohibited.** No lot shall contain more than one (1) principal building or structure except as permitted and regulated in the RA-1, RA-2, RA-3, RA-4, RA-5A, RA-5B, NS-AMFH, NA-AH and RA-5C zone districts, and except as may be specifically permitted otherwise by this ordinance. On any lot that is divided by a zone boundary, one (1) principal building or structure otherwise permitted in the zone district shall be permitted on each portion of said lot located in a different zone than the remainder of the lot located in a different zone than the remainder of the lot; provided, however, that for purposes of determining compliance with the applicable zoning regulations, the zone boundaries on said lot shall be construed to be lot boundaries. **[Amended 12-16-2014 by Ord. No. 2031]**
- B. **Basement dwelling units prohibited.** Unless expressly permitted in this ordinance, no dwelling unit shall be located in a basement. As used in this subsection, the term "dwelling unit" shall be construed to mean a space which contains kitchen facilities, sanitary facilities and sleeping facilities.
- C. **Basement floor usage in non-residential buildings.** Basement space in non-residential buildings may be used only for purposes accessory and ancillary to the principal use, such as storage and similar support functions. Such basement space shall not be counted when computing habitable floor area. No basement space shall be used, improved, constructed or arranged for display space, sales space, work areas, food preparation and service areas, offices, meeting rooms, drafting rooms or facilities, waiting rooms, laboratories, or patient treatment or therapy facilities, all of which are deemed for purposes of this section to be included as integral components of the principal use, nor shall basements be used for any purposes that would require employees or principals to perform functions in that location of more than a transient nature, nor for such purposes as would require clients, customers, or patrons to enter that location for any reason.
- D. **Minimum floor area requirements for dwelling units.** Dwelling units in all zones shall be required to contain the following minimum habitable floor areas; provided, however, that no dwelling unit shall contain less than six hundred (600) square feet of floor area in any event:
1. four hundred (400) square feet of habitable floor area for each occupant over seventeen (17) years of age; and
 2. two hundred (200) square feet of habitable floor area for each occupant up to seventeen (17) years of age.

E. **Maximum floor area ratio for single family detached dwellings, two family dwellings and duplexes.** In all zone districts, lawfully permitted single family detached dwellings, two family dwellings, duplexes, community residences and shelters and any other lawfully permitted uses which are subject to the same requirements as the foregoing, shall comply with the following schedule of maximum floor area ratios **[Amended 09/29/09 by Ord. No. 1947]**:

1. Single family detached dwellings and community residences and shelters.

Lot Area (square feet)	Maximum Floor Area Ratio (% of lot area, square feet)
0- 9,999 sf	37%, but not above 3,200 sf
10,000-11,999 sf	32%, but not above 3,600 sf
12,000-15,999 sf	30%, but not above 4,000 sf
16,000-39,999 sf	25%, but not above 8,000 sf
40,000 sf and over	20%

2. Two family dwellings and duplexes.

Lot Area (square feet)	Maximum Floor Area Ratio (% of lot area, square feet)
0-11,999 sf	42%, but not above 3,600 sf
12,000-15,999 sf	30%, but not above 4,000 sf
16,000-39,999 sf	25%, but not above 8,000 sf
40,000 sf and over	20%

3. Notwithstanding the provisions of subparagraphs E.1 and E.2 above, proposed expansions of lawfully permitted single family detached dwellings, two family dwellings and duplexes existing as of July 1, 1998 shall be subject to subparagraph E.1 or E.2 above, as applicable, or to the following schedule, whichever is less restrictive, for that period between the effective date of this ordinance and June 1, 2001. On June 1, 2001, the following standards shall no longer apply and such expansions shall be required to comply with subparagraphs E.1 or E.2 above, as applicable.

<u>Zone</u>	<u>Permitted Use</u>	<u>Maximum Floor Area Ratio</u>
RS-40	Single Family Detached	20%
RS-24	Single Family Detached	25%
RS-16	Single Family Detached	25%
RS-12	Single Family Detached	30%
RS-10	Single Family Detached	32%
RS-8	Single Family Detached	35%
RS-6	Single Family Detached	35%
RM-12	Single Family Detached	35%
	Two Family	35%
RM-8	Single Family Detached	35%
	Two Family	40%
RM-6	Single Family Detached	35%
	Two Family	40%
RM-6D	Single Family Detached	35%
	Two Family	40%
	Duplex	40%
RA-3	Single Family Detached	35%
	Two Family	40%
P-1	Single Family Detached	30%
P-2	Single Family Detached	30%
	Two Family	30%
GB-3	Single Family Detached	35%
	Two Family	40%

- F. **Maximum coverage by buildings and above grade structures for single family detached dwellings, two family dwellings and duplexes. [Amended 12-03-02 by Ord. 1809]** In all zone districts, lawfully permitted single family detached dwellings, two family dwellings, duplexes, community residences and shelters, and any other lawfully permitted uses that are subject to the same requirements as the foregoing uses and structures, shall comply with the following schedules of maximum coverage by buildings and above grade structures. Earthen flood detention basins as defined by this ordinance shall not be considered as a building or structure for purposes of computing this coverage.

1. Coverage by buildings and above grade structures.

Lot Area (square feet)	Maximum Coverage by Buildings and Above Grade Structures (% of lot area, square feet)
0-23,999 sf	20%, but not above 3,600 sf
24,000-39,999 sf	15%, but not above 4,000 sf
40,000 sf and over	10%

2. Limited increase in coverage permitted for decks. Notwithstanding the maximum coverage limits in Paragraph F.1 above, the coverage limitations in Paragraph F.1 above may be exceeded by the following amounts when such excess coverage is caused by a deck or decks as defined by this ordinance and located in the rear yard, subject to the limitations in Paragraphs F.2.a, b and c below:

Lot Area (square feet)	Maximum Additional Coverage by Decks (% of lot area, square feet)
0-39,999 sf	2%, but not above 400 sf
40,000 sf and over	1%

- a. The deck or decks, or portion thereof, shall be adjacent to the first/ground floor of the dwelling only; otherwise, the limited increase in coverage shall not be permitted.
 - b. The deck or decks, or portion thereof, shall be open and without enclosures on all sides (except the side abutting the dwelling), including windows, screens or lattices, except for a railing not exceeding a height of 42 inches (3.5 feet) above the floor of the deck, and except for the enclosure of sub-floor areas required by § 13.02C.5; otherwise, the limited increase in coverage shall not be permitted.
 - c. If a deck or decks is/are proposed for a property that already exceeds the coverage limitations in Paragraph F.1 above, this Paragraph F.2 or Paragraph F.3 below (as in the case of legally nonconforming structures or structures that have received variances for coverage), the limited increase in coverage permitted for the deck by this Paragraph F.2 shall be reduced by the amount of excess coverage that already exists.
3. Limited increase in coverage permitted for porches, ingress and egress platforms and decks in combination. Notwithstanding the maximum coverage limits in Paragraph F.1 above, the coverage limitations in Paragraph F.1 above may be exceeded by the following amounts when such excess coverage is caused by ingress/egress platforms and porches, or by ingress/egress platforms and porches in combination with a deck or decks, all as defined by this ordinance, subject to the limitations in Paragraphs F.3.a through F.3.k below:

Lot Area (square feet)	Maximum Coverage by Ingress/Egress Platforms, Porches and Decks Excluded from Coverage Calculation (% of lot area, square feet)
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0-11,999 sf	4%, but not above 420 sf
12,000-23,999 sf	3.5%, but not above 720 sf
24,000-39,999 sf	3%, but not above 1,000 sf
40,000 sf and over	1,000 sf

- a. In no event shall the coverage in excess of that permitted by Paragraph F.1 above caused by a deck or decks be greater than that permitted by Paragraph F.2 above.
- b. In no event shall the coverage in excess of that permitted by Paragraph F.1 above caused by ingress/egress platforms or porches, alone or in combination with a deck or decks, be greater than that permitted by this Paragraph F.3.
- c. The ingress/egress platforms and porches shall be attached primarily to the front wall of a dwelling, or in the case of corner lots, the ingress/egress platforms and porches shall be attached primarily to the front or street side walls of the dwelling; otherwise, the limited increase in coverage shall not be permitted. For purposes of this subsection, the "front wall" shall be considered that wall facing the front yard and located closest to the street, and the "street side wall" shall be considered that wall facing the street side yard and located closest to the street.

Platforms and porches that are attached primarily to the side or rear walls of the dwelling are permitted, but shall not be entitled to the limited increase in coverage permitted by this Paragraph F.3.

- d. Ingress/egress platforms or porches attached primarily to the front wall are also permitted to wrap around the side wall(s) of the dwelling. On corner lots, platforms or porches attached primarily to the front wall are also permitted to wrap around the street side wall and/or the side wall of the dwelling. On corner lots, platforms or porches attached primarily to the street side wall are also permitted to wrap around the front wall and/or the rear wall of the dwelling. On all such wrap-around porches, the limited increase in coverage permitted by this Paragraph F.3 shall only

apply to that portion of such ingress/egress platforms and porches that are located no more than fifteen (15) feet further from the street right-of-way than the primary wall to which the platform or porch is attached (i.e., the front wall or street side wall of the dwelling). The portions of platforms or porches that extend further from the street along the secondary walls shall be subject to the coverage limitations in Paragraph F.1 above and shall not be entitled to the limited increase in coverage permitted by this Paragraph F.3.

- e. The ingress/egress platforms and porches shall be adjacent to the first/ground floor of the dwelling only; otherwise, the limited increase in coverage shall not be permitted.
- f. The ingress/egress platforms and porches shall have a floor elevation no higher than 42 inches (3.5 feet) above normal grade at the base of the ingress/egress platform or porch; otherwise, the limited increase in coverage shall not be permitted.
- g. Ingress/egress platforms and porches shall not exceed a total height, including any roof, of fifteen (15) feet above normal grade at the base of the ingress/egress platform or porch, or twelve (12) feet above the floor of the ingress/egress platform, whichever is less; otherwise, the limited increase in coverage shall not be permitted.
- h. Those portions of ingress/egress platforms and porches entitled to the limited increase in coverage shall not have any portion of the building located above such ingress/egress platform or porch. **[Amended 11-21-06 by Ord. No. 1878]**
- i. The ingress/egress platforms and porches shall not be heated or otherwise habitable for year-round occupancy; otherwise, the limited increase in coverage shall not be permitted.
- j. The ingress/egress platforms and porches shall be open and without enclosures on all sides (except on the side abutting the dwelling), including windows, screens or lattices, except for a railing or wall not exceeding a height of 42 inches (3.5 feet) above the floor of the ingress/egress platform or porch, and except for the enclosure of sub-floor areas by lattice or other screening materials; otherwise, the limited increase in coverage shall not be permitted.

- k. If ingress/egress platforms or porches are proposed for a property that already exceeds the coverage limitations in Paragraph F.1 or F.2 above, or this Paragraph F.3 (as in the case of legally nonconforming structures or structures that have received variances for coverage), the limited increase in coverage permitted for the ingress/egress platforms or porches by this Paragraph F.3 shall be reduced by the amount of excess coverage that already exists.
4. Additional coverage not permitted for enclosure of decks, ingress/egress platforms and porches. Notwithstanding the additional coverage permitted for certain decks, ingress/egress platforms and porches as set forth in Paragraphs F.2 and F.3 above, the following shall apply:
- a. The additional coverage in Paragraphs F.2 and F.3 above shall not be permitted for any decks, ingress/egress platforms or porches that are or are proposed to be enclosed by screens, lattice, windows, doors, walls or other such features, except for enclosure by railings, walls or sub-floor enclosures that are permitted in F.2.b and F.3.j above.
 - b. The additional coverage in Paragraphs F.2 and F.3 above shall not be permitted for the conversion of any residential decks, ingress/egress platforms or porches to year-round habitable space.
 - c. The provisions in Paragraphs F.4.a and F.4.b above shall apply even if such additional coverage would be permitted for such decks, ingress/egress platforms or porches if they were not so enclosed or converted.
 - d. Any action or application for development to enclose or convert decks, ingress/egress platforms and porches as set forth in Paragraphs F.4.a and F.4.b above shall result in the revocation of any rights to the increased coverage permitted by Paragraphs F.2 and F.3 above, as applicable, and shall subject all above-grade structures on the property to the coverage limitations in Paragraph F.1 above.
 - e. Any unauthorized violation of this Paragraph F.4 shall not be exempted from the enforcement and penalty provisions in Article 21 of the Land Use Ordinance of the Town of Westfield that would normally apply, the same as any other violation of the provisions of said Land Use Ordinance.

- G. **Maximum coverage by improvements for single family detached dwellings, two family dwellings and duplexes.** In all zone districts, lawfully permitted single family detached dwellings, two family dwellings, duplexes, community residences and shelters and any other lawfully permitted uses which are subject to the same requirements as the foregoing, shall comply with the following schedule of maximum coverage by improvements. For purposes of administering this provision, the improvements regulated shall include, but not necessarily be limited to buildings; above grade structures; and at grade structures including, but not limited to, sidewalks, parking areas, patios, driveways, swimming pools, etc. It is the intention of this provision that, except for the permissible coverage set forth in the schedule, the lot area be covered only by vegetation. Earthen flood detention basins as defined herein shall not be considered as a building, structure or improvement for purposes of computing this coverage.

Lot Area (square feet)	Maximum Coverage by Improvements (% of lot area)
0-15,999 sf	50%, but not above 6,400 sf
16,000-23,999 sf	40%, but not above 7,200 sf
24,000-39,999 sf	30%, but not above 8,000 sf
40,000 sf and over	20%

§ 12.05. HEIGHT EXCEPTIONS.

Notwithstanding the height limitations in each zone district, the following structures shall be exempt from such limitations only to the extent indicated, unless provided otherwise by this ordinance:

- A. The height limitations required in each zone district shall not apply to church steeples.
- B. Permitted house of worship buildings, school buildings and municipally owned, leased or operated buildings, structures or uses, and masts, flagpoles, and antennas accessory to a permitted residential use, except dish antennas as are regulated in § 13.04, shall be exempt from the height limitations in each of the zone districts; provided, however, that such structures shall not exceed forty-five (45) feet in height.
- C. Rooftop structures, including but not limited to decorative architectural elements such as cupolas, weathervanes, railings, etc.; heating, ventilating and air conditioning equipment;

chimneys, etc., provided, however, that the foregoing structures shall comply with the following:

1. the area occupied by such rooftop structures shall not exceed ten percent (10%) of the total roof area or two hundred and fifty (250) square feet, whichever is less;
2. such rooftop structures, except for chimneys, shall be set back at least ten (10) feet from any wall of the building; and,
3. the height of such rooftop structures above the ground shall not exceed the maximum height permitted for the principal building by more than seven (7) feet, and shall not exceed the actual height of the building by more than seven (7) feet, whichever is less.

§ 12.06. PLANTING AND FENCES ON STREET PROPERTY LINES.

No fence, hedge, shrubbery or planting on any lot or adjacent thereto in any zone shall be permitted within the street right-of-way. All trees adjoining street sidelines in all zones shall have their branches trimmed at all times to ensure unobstructed vision eight (8) feet above street pavement level. On any corner lot in any zone, in the Town of Westfield, no shrubbery, planting, fence or other obstruction to vision shall be permitted adjacent to the street property line except as is provided in Chapter 29 of the Code of the Town of Westfield which provides for sight triangles.

§ 12.07. FENCES AND ABOVE GROUND WALLS.

The following regulations apply to fences and freestanding walls. In addition, fences required for enclosing swimming pools and hot tubs by the Uniform Construction Code shall be required to comply with the requirements of said code as well as the following regulations. Notwithstanding the foregoing, recreational facility enclosures as regulated in § 13.02F.4 shall be exempt from the provisions of this section.

- A. No construction permit shall be required for fences or freestanding walls conforming with the height limits for same as set forth in this article.
- B. Fences and freestanding walls shall be permitted in front, side and rear yards.
- C. Fences and freestanding walls shall not exceed four (4) feet in height when located in the front yard or, in the case of a corner lot, when located in the front yard, street side yard or in any portion of the rear yard which is closer to the abutting street than 1) the principal building on the lot, or 2) the minimum street side yard setback, whichever is more restrictive. The

provisions of this subsection shall not apply to lots under construction or lots where demolition of the improved structures on the lot has occurred, as determined by the Construction Official of the Town. In such circumstance, six (6) foot high fencing shall be permitted around the perimeter of the lot or in such other location as the Construction Official in the reasonable exercise of his discretion may determine in order to protect the health and safety of the public in accordance with the provisions of the Town Code of the Town of Westfield. **[Amended 10-10-06 by Ord. No. 1885]**

- D. Fences and freestanding walls shall not exceed six (6) feet in height when located in the side yard or rear yard, except when more stringent requirements apply in certain circumstances when located on corner lots, as set forth in Subsection C above.
- E. Fences and freestanding walls may abut the property line without any required setback; provided, however, in cases where a fence or freestanding wall in the side or rear yard is permitted to exceed six (6) feet in height by variance, such fence or freestanding wall shall be set back from any property line a distance of at least one (1) foot for each foot of height in excess of six (6) feet.
- F. No fence or above ground wall shall be located on any property in any way which violates the provision of Chapter 29 of the Town Code which provides for sight triangles at street corners.
- G. In the event that both sides of a fence or freestanding wall are not identical, the finished/preferred side shall be required to face the street and/or abutting properties, as applicable.
- H. Fences or freestanding walls which may present a danger or hazard to the public welfare, including but not limited to fences or freestanding walls which are electrified, contain broken glass, razor wire or barbed wire, or other sharp edges, are prohibited.
- I. Approval by the Town Engineer shall be required for the erection, relocation, alteration or other construction involving any fence or freestanding wall located within a street right-of-way.
- K. Open style fencing shall be permitted where such fencing lies between the principal residence and a swimming pool, in order to allow full view of the swimming pool from the residence. **[Amended 09/29/09 by Ord. No. 1947]**

§ 12.08. RETAINING WALLS.

The following regulations apply to retaining walls:

- A. No construction permit shall be required for retaining walls conforming with the height limits for same as set forth in this article.

- B. Retaining walls shall be permitted in front, side and rear yards.
- C. Retaining walls shall not exceed four (4) feet in height. In the event a guard rail or other restraining device is provided at the top of the wall, the wall height shall be measured to the top of said restraining device. For purposes of administering this subsection, terraced retaining walls involving more than one (1) section of wall above or below each other shall be construed as one (1) wall unless the base of the upper wall is separated from the face of the lower wall by at least four (4) feet, measured horizontally.
- D. In the event a retaining wall is permitted by variance to exceed four (4) feet in height, the Board granting the variance may require an appropriate guard rail or other restraining device in order to protect persons from falling off the edge of the wall.
- E. Retaining walls which may present a danger or hazard to the public welfare, including but not limited to retaining walls which are electrified, contain broken glass, razor wire or barbed wire, or other sharp edges, are prohibited.
- F. No retaining wall shall be located on any property in any way which violates the provisions of Chapter 29 of the Town Code which provides for sight triangles at street corners.
- G. Approval by the Town Engineer shall be required for the erection, relocation, alteration or other construction involving any retaining wall located within a street right-of-way, public drainage or sewer easement or other public land or easement under the control of the Town of Westfield.
- H. Retaining walls shall be setback from the property line a distance of at least one (1) foot for each foot of height of the retaining wall. **[Amended 09/29/09 by Ord. No. 1947]**
- K. In instances where the slope on the upper side of the retaining wall exceeds 3:1 a guard rail or other restraining device must be provided at the top of the retaining wall. **[Amended 09/29/09 by Ord. No. 1947]**

§ 12.09. VENDING MACHINES.

Vending machines, except cigarette vending machines, are permitted within a building or structure in any non-residential zone district. Vending machines designed and used for the sale of candy, chewing gum, soft drinks and other snack foods, when located outside a building on properties occupied by a gasoline filling station or gasoline service station shall be permitted; provided that said vending machines are attached to the principal building or structure on the premises, and

further provided that no such vending machines shall have an internally illuminated display. Cigarette vending machines located either within or outside of a building are prohibited in all zone districts.

§ 12.10. DANGEROUS CONDITIONS.

No building permit or zoning approval shall be granted for a building, structure or use if the design or construction of said building or structure involves exceptional risks of traffic congestion or public safety. If the Construction Official or Zoning Officer, as applicable, finds either of the above to be the case, he shall refuse a permit and refer the application to the Board having jurisdiction over the matter.

§ 12.11. ARCHITECTURAL DESIGN OF BUILDINGS.

In addition to any other requirements of this ordinance, the following general requirements shall apply to the architectural design of buildings:

- A. **Design of buildings must be compatible with location.** The design or construction of any building or use shall be visually compatible with the character of existing improvements on the property and with the character of the surrounding neighborhood. In the event that it is impossible for the proposed construction to be compatible with both the character of existing site improvements and the character of the neighborhood, the proposed construction shall be visually compatible with the character of existing site improvements. For purposes of administering this section, the design standards in § 10.15 of this ordinance shall apply.
- B. **Excessive uniformity in design of residential buildings prohibited.** In any new development in which two (2) or more new dwellings are proposed, no dwelling shall hereafter be erected or constructed which shall be like or substantially like any existing neighboring dwelling or any proposed neighboring dwelling for which a building permit has been issued, except that the foregoing shall not apply to multifamily dwellings or to attached single family dwellings. For purposes of administering this requirement, the following provisions shall apply:
 - 1. A dwelling shall be deemed to be a "neighboring dwelling" to the subject lot if said dwelling or any part thereof is currently or proposed to be located on any of the following lots: a. any first or second lot in either direction along the same side of the street from the subject lot, without regard to intervening street lines; or

- b. any lot or portion thereof that has street frontage on the opposite side of the street from the subject lot or on the opposite side of the street from any lot referred to in 1.a above.
2. A dwelling shall be deemed to be "like or substantially like" any neighboring dwelling if it is like such neighboring dwelling in more than three (3) of the following six (6) respects:
 - a. height of the main roof ridge above the elevation of the first floor;
 - b. length of the main roof ridge;
 - c. width between outside walls under the main roof perpendicular to the length thereof;
 - d. in the front elevation, relative location with respect to each other, of the garage (if attached), porch (if any) and the remainder of the dwelling;
 - e. in the front elevation, relative location of windows; and
 - f. in the front elevation, materials used in the exterior wall of the dwelling.
3. For paragraphs B.2.a, b, c and d above, dwellings shall be deemed to be like each other if the difference between the respective dimensions of the subject dwellings is less than or equal to six (6) feet.
4. For paragraph B.2.e above, dwellings shall be deemed to be like each other if the difference between the respective dimensions of the subject dwellings is less than or equal to two (2) feet.
5. For paragraph B.2.f above, dwellings shall be deemed to be like each other if the difference between the percentage wall coverage of the subject dwellings by the same material is less than or equal to thirty percent (30%).
6. Dwellings shall be deemed to be like each other if the only difference in the relative location of elements is an end-to-end or side-to-side reversal of same.

§ 12.12. ANIMALS AND BIRDS.

The keeping of fowl, chickens, ducks, pigeons, horses, ponies, or other domestic equine animals, pigs, goats, sheep or cattle or other kinds of livestock is prohibited in all zones.

§ 12.13. MUNICIPAL USES.

Any use or development by the Town of Westfield shall be a permitted use in all zone districts and shall be exempt from the zoning regulations, design standards for subdivisions and site plans, and any requirement set forth in this ordinance to obtain site plan approval.

§ 12.14. LIGHTING FOR SINGLE-FAMILY AND TWO-FAMILY RESIDENTIAL USES.

Lighting for single-family and two-family residential uses shall be subject to the design standards for lighting in § 10.11.

§ 12.15. PERFORMANCE STANDARDS.

All uses shall be required to comply with the following performance standards:

- A. Noise. All applicable State and County noise regulations shall be complied with, including, but not necessarily limited to, the N.J. Noise Control Act (N.J.S.A. 13:1G-1 et seq.) and regulations (N.J.A.C. 7:29-1.1 et seq.) and the Union county Regional Environmental Health Commission Noise Control Ordinance (No. 01-1989), as amended.
- B. Vibration. No industrial, scientific or research use shall produce any earthborne vibration which is discernible to the human sense of feeling at the boundary of the subject property, provided that vibrations produced by motor vehicles entering or exiting the site are exempt from this regulation.
- C. Air quality. All applicable Federal and State regulations shall be complied with, including, but not necessarily limited to, the Clean Air Act (42 U.S.C. 7401 et seq.), the N.J. Pollution Control Act (N.J.S.A. 26:2C-1 et seq.) and regulations (N.J.A.C. 7:27-1.1 et seq.), as amended.
- D. Odor. No industrial, scientific or research use shall produce any odor which is perceptible to the human sense of smell at the boundary of the subject property, if said odor(s) would produce a public nuisance or hazard. Odors from motor vehicle emissions on the site are exempt from this regulation.
- E. Glare. Any industrial, scientific or research use operation producing any glare shall be shielded or performed within an enclosed building, as determined by the Planning Board, in such a manner as not to create a public nuisance or hazard at the

boundary of the subject property. Glare from motor vehicle headlights entering or exiting the site driveway are exempt from this requirement.

- F. Electrical interference. No industrial, scientific or research use shall be conducted which produces electromagnetic interference with radio or television reception or otherwise interferes with the operation of electronic devices located outside the boundaries of the subject property. Operators of equipment must comply with Federal Communications Commission regulations regarding the use of such equipment.
- G. Radiation. All applicable Federal and State radiation regulations shall be complied with, including, but not necessarily limited to, provisions of the N.J. Radiation Protection Act (N.J.S.A. 26:2D-1 et seq.) and regulations (N.J.A.C. 7:28 1.1 et seq.), as amended.
- H. Waste disposal. All applicable Federal, State, County and local regulations pertaining to the storage, disposal and recycling of solid and liquid waste materials shall be complied with.
- I. Fire and explosive hazards. All industrial, scientific or research use operations and structures shall be conducted and/or built in accordance with the standards of the National Board of Fire Underwriters, the Uniform Construction Code and the Town Fire Prevention Ordinance, whichever is more restrictive.
- J. Toxic and hazardous materials. All applicable Federal, State, County and local regulations pertaining to the use, storage, transporting and disposal of toxic and hazardous materials shall be complied with.